

1685 and 1686. MARGARET NAIRN *against* The LADY NAIRN.

See the first part of the report of this case, Dictionary, p. 13,256.

1685. *December 1.*—A BILL was given in by the Lady Nairn, for stopping the decret pronounced against her, in favours of Margaret Nairn, as mentioned 9th December 1684, for payment of 22,000 merks, contained in her father's bond; on this reason, that my Lord Athole, her father-in-law, was absent, and that, being now 12 years old, she was not yet authorised with curators, for which a competent time behoved to be granted her.

The Lords, on thir pretences, superseded extract till the 1st of January. *Vide* 18th February 1686. *Vol. I. Page 380.*

1686. *February 18.*—Margaret Nairn, Muckarsie's daughter, pursues the Lady Nairn for 22,000 merks, contained in my Lord Nairn's heritable bond. ALLEGED,—This security was relative to a bond of tailyie made by Muckarsie, which had this quality, that, if any of his two daughters died, then her portion should divide thus: *viz.*—6000 merks to his brother Greenyards; 2000 merks to his other brother Strathurd, and the other 2000 merks to the surviving sister; so it is, one of the sisters is dead. ANSWERED,—My Lord Nairn's bond is simple and absolute, and bears no relation to that tailyie, which was reprobed on all hands as done *in lecto*. REPLIED,—It must be presumed to be correlative, because it is for the same sum, *inter easdem personas*, and the same terms of payment.

The President inclined to cause the pursuer find caution, to secure the Lady Nairn against that tailyie and Greenyards's claim; but, because there was only a copy of the tailyie lying in process, the Lords, on a bill, allowed the Lady Nairn a diligence to the 15th of March, against George Dallas, or other havers, to recover it. *Vide* 18th November 1686. *Vol. I. Page 405.*

1686. *March 24.*—The case of the Lady Nairn against Lady Muckarsay being reported by Boyne, the Lords found, seeing her husband now concurs, the process must go on; though his name was not *ab initio* in the summons; but that the license to pursue was not sufficient, without a decret dative were also produced. *Vol. I. Page 409.*

1686. *November 18.*—Margaret Nairn, Muckarsie's daughter, pursues the Lady Nairn for payment of 22,000 merks, as mentioned 18th February 1686. ALLEGED,—By the pursuer's father's tailyie, 6000 merks of this were provided to return to Greenyards, his brother, if any of his own two daughters died; and one of them is dead. ANSWERED,—Strathurd did not regard that tailyie, which he knew was on deathbed, but granted a simple bond, noway relative thereto; and, *actu geminato*, reiterated it by a bond of corroboration.

This being advised, the Lords repelled the allegiance proponed for the Lady Nairn, defender, and the declarator raised by her *quoad* the sum of 2000 merks, which, by the bond of tailyie, was to return to my Lord Nairn himself; as to which, they found him excluded by the new security he had given: but sustained the declarator to this effect, that the pursuer shall be holden and obliged to warrant and relieve the defender of the sum of 6000 merks, in case Greenyards his children shall prevail for the same: and therefore decerned for the

whole sum of 22,000 merks libelled, and the annualrents thereof; the pursuer, upon payment, being obliged to warrant the defender at the hands of Greenyards' children, as to the said 6000 merks, in case they shall distress her for the same; reserving always to the pursuer, action of reduction of the said bond of tailyie, *ex capite lecti*, or otherwise, as accords; and in case of reducing it, the warrandice to cease. *Vide* 8th December 1686. *Vol. I. Page 429.*

1686. *December 8.*—The Lady Nairn gives in a bill, craving the Lords may stop extracting of the decret given against her, 18th November 1686, till she be secured by a reduction of the tailyie against Greenyards, *quoad* the 6000 merks; and craving, *quoad* the other 16,000 merks, that execution may be superseded till Whitsunday, it not being easy to raise such a sum between terms.

The Lords ordained decret to go out; but sisted execution for the 6000 merks till the event of the reduction, and recommended to Carse to deal with them to supersede the 16,000 merks till Whitsunday next; the bygone annualrents being always first paid. *Vol. I. Page 435.*

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1686. *December 18.* The COUNTESS OF KINCAIRDEN *against* DAVID MURRAY of STANHOPE.

THE Countess of Kincairden's bill against David Murray of Stanhope, her son-in-law, and his answers, are advised. She represented, that, by her daughter's contract of marriage with Stanhope, she assigned him to an infestment of 12,000 guilders for her tocher: and was obliged to instruct that these 12,000 guilders to which she assigned him, were a part of 25,000, due to Van Villiers; and to get a valid disposition to it from her brother Somelsdyck Van Arsen, and to obtain a decret of preference before my Lord Cardross; and that she had done all this, and yet Stanhope had raised inhibition on the contract, and an arrestment of all her jointure: and, seeing she had performed, craved the Lords would annul the inhibition and arrestment.

The Lords recommended to Drumcairn to compare the contract with the papers produced by the Lady; and, if she had implemented all, allowed him to recal the inhibition and arrestment.

This summary way, without a process, was yielded to the Lady's solicitation. But a hearing, in presence, being obtained on the 20th of January 1687, it was debated, that the Lady had not fulfilled the foresaid three conditions adjected to her obligation in the contract of marriage.

The Lords repelled the allegiance that the right is not *habili modo* transmitted to Somelsdyck by the nomination of the testament produced; which they sustained. And repelled the other allegiance, that, the right being only a right of relief, there is no distress nor payment instructed, in regard of the decret of preference,—the Countess of Kincairden always producing the decret. And, before answer to the allegiance anent the import of the Countess's obligation in the contract of marriage, ordained the commoners, and the writer of, and the witnesses in the said contract, such of them as are alive, to be examined, if it was the meaning of the parties that the obligation granted by the Countess for obtaining a decret of preference to my Lord Cardross, should extend